

Fiscal Intermediaries

Susan Flanagan

Overview, Historical Events and Current Developments

For well over two decades, states have been providing consumer-directed support services, including personal assistance services (PAS), to persons with disabilities and chronic conditions through Medicaid and state-funded programs.

Consumer-directed support services differ from traditional agency-based support services in that the individual served (the consumer) exercises greater choice and control over the nature, scope and level of services he or she receives from the provider, instead of the provider having most, if not all, of the control over how, when and where services are delivered (Doty, et al., 1996). No single service delivery model can encompass the entire range of possible varieties of consumer-directed support services. In general, a service can be described as consumer-directed if the persons receiving the service are responsible for recruiting/hiring their worker(s), setting the terms and conditions of work, training workers, supervising the day-to-day activities performed by workers, managing the administrative responsibilities of an employer (e.g., preparation of payroll and filing employment taxes), evaluating workers' performance and disciplining, and discharging workers, as appropriate (Flanagan, 1998).

The first consumer-directed support services programs focused on the provision of personal assistance services (PAS) to self-directing individuals with disabilities. In the 1990's states began to develop programs that offered a wide variety of services and supports, in addition to PAS, and to both self-directing individuals and individuals who had representatives assisting them with the management of their services and providers.

As these programs evolved, consumers and their representatives began to desire assistance with some of the employer-related responsibilities associated with consumer-directed support service programs, especially managing payroll and employment taxes. In the 1970s and 1980's, many states responded to this request by treating support service workers as independent contractors, thus easing the employment tax requirements and burden for consumers. However, the U.S. Internal Revenue Service and the Department of Labor viewed support service workers as domestic service employees of the consumer rather than independent contractors. The agencies made this determination primarily based on the level of direction and control exercised by the consumer in the home. In addition, the agencies reported that many of the support service workers were not properly filing the taxes required of independent contractors, exposing themselves, consumers and possibly the state to liability for noncompliance with filing federal and state employment-related taxes.

One remedy was for states to implement either government or vendor fiscal intermediaries, who could then withhold, file and deposit federal, state, and local employment-related taxes, and prepare and distribute payroll for support service workers on behalf of consumers.

Initially, Fiscal ISOs developed and implemented by states primarily managed the payroll function for consumers. However, with the implementation of the Robert Wood Johnson Cash and Counseling Demonstration and Evaluation Program and Self-Determination Program in the 1990s, the Fiscal ISO role was expanded. Under these programs, Fiscal ISOs were now responsible for managing consumers' benefits (e.g., individualized budgets), paying non-labor, program related expenses, and in some instances, acting as a Fiscal Conduit ISO distributing consumers' benefits in cash to consumers to manage themselves.

In the Consumer-directed Support Services Programs Inventory conducted in the summer of 2001, 55 of 121 (45%) programs reported using a vendor Fiscal ISO and eight of 121 (6%) programs reported using a government Fiscal ISO. The vendor Fiscal ISO was the most frequently used ISO type (Flanagan, 2001).

Major Challenges and Unresolved Issues

There are a number of major challenges and unresolved issues facing states developing Fiscal ISOs today:

- The IRS rules, forms and instructions pertaining to government and vendor Employer Agents are not clear, and IRS staff are not well-informed on the topic.
- Fiscal ISO is a small niche market that has yet to reach its full capacity nationally, so access to Fiscal ISO services varies throughout the country. Barriers to entering the Fiscal ISO marketplace need to be addressed.
- Since the types of organizations currently operating as Fiscal ISOs vary from experienced payroll and accounting services organizations to social service organizations, states need to make sure that organizations that are selected to be Fiscal ISOs can perform all the required functions.
- Fiscal ISOs need a sufficient number of consumers to make their services economical and to themselves be financially viable.
- States need to clarify what services their Fiscal ISO is providing.
- State program staff needs to be educated regarding the required federal, state and local policies, procedures and tasks associated with government and vendor Fiscal ISOs in order to effectively develop and implement these models and to monitor their performance.
- State program staff needs to develop and implement effective methods for evaluating the readiness and ongoing performance of government and vendor Fiscal ISOs.

Current Projects and Activities Related to Fiscal Intermediaries

As a consultant to the Robert Wood Johnson Cash and Counseling Demonstration and Evaluation Program I have developed and implemented an Initial Readiness Review and Mid-Year/Annual Review Manual for Counseling/Fiscal Agencies for the Arkansas Independent Choices Program, and Fiscal ISOs for the Florida Consumer-Directed Care Program and the New Jersey Personal Preference Programs. I have also conducted Counseling/Fiscal Agency and Fiscal ISO Initial Readiness Reviews and Mid-

year/Annual Reviews for these programs and am providing state program staff with ongoing technical assistance and support related to fiscal intermediary issues. Also, I am providing technical assistance to RWJ National Program Office on Fiscal ISO issues. Through the RWJ contract, with staff from DHHS/ASPE, I am a member of the IRS Workgroup on Fiscal ISOs, whose objective is to clarify IRS rules pertaining to Fiscal ISOs (IRS Employer Agents) and assist the IRS in preparing a bulletin on Fiscal ISO issues.

Second, I am assisting the State of New Hampshire and Granite State Independent Living in implementing New Hampshire's Medicaid Infrastructure and Real Choices CPASS grants. In this role, I am assisting in the development and implementation of an Agency with Choice ISO model to implement the State's new personal care service, including drafting Medicaid rules, provider certification rules, a provider manual and conducting training sessions for Agency with Choice ISO providers.

Third, I am currently providing technical assistance to a number of state and local governments regarding the development, implementation and evaluation of a variety of intermediary service organizations including Fiscal ISOs for persons of all ages with disabilities and chronic conditions.

Recommendations for Further Policy Development and Research

- The information collected through the 2001 Consumer-directed Support Services Program Inventory should undergo further updating and refinement so that a database of program and ISO information can be available on an ongoing basis for research and policy development purposes.
- Applied public policy research should be conducted on investigating and developing models for providing affordable workers compensation, health, life and disability insurance coverage for support service workers who are hired directly by consumers, and how Fiscal ISOs could help facilitate this.
- Continued work is needed with the IRS and state tax authorities to clarify the Fiscal ISO's role and responsibilities, and to coordinate and streamline federal and state tax filing activities wherever possible.
- Training materials and opportunities need to be developed and distributed nationally so that organizations that wish to become Fiscal ISOs can consistently fulfill their roles and responsibilities, and federal, state and local requirements in an accurate, complete and timely manner.
- Consumers of all ages and disabilities need to be surveyed regarding their satisfaction with the types of intermediary services (including fiscal intermediary services) they are currently receiving and the types of intermediary services they would like to receive. This information will help in determining if the supports being provided to consumers through intermediary service organizations, including fiscal intermediaries, are what consumers really want and need.

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